

Deed

Lot 22 DP 1270620 Suncrest Avenue, Sussex Inlet Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Shoalhaven City Council

AMAL Trustees Pty Ltd ATF Sussex Inlet Property Trust

[INSERT DATE EXECUTED AS A DEED]

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APPENDIX: EXPLANATORY NOTE50

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Regulatory Compliance Tables

Table 1 – Provisions of Act

| Act Provision | Requirement | Compliance |
|-----------------|---|---|
| S.7.4(1) | 'Planning Authority' | Council |
| | 'Developer' | Developer |
| | Person associated with Developer | N/A |
| | Development Application / Modification Application | See definitions of 'Development Application' and 'Modification Application' in clause 1.1 and Item 4.a and 4.b of the VPA Particulars |
| | Development Contributions | See Part 2 and Development Contributions Table |
| S.7.4(1), (2) | Public Purpose | See Column 2 of the Development Contributions Table |
| S.7.4(3)(a) | Land | See Definition of 'Land' in clause 1.1 and Item 1 of the VPA Particulars |
| S.7.4(3)(b)(i) | Instrument Change | See definition of 'Instrument Change' in clause 1.1 and Item 3 of the VPA Particulars |
| S.7.4(3)(b)(ii) | Development | See definition of 'Development' in clause 1.1 and Item 2 of the VPA Particulars |
| S.7.4(3)(c) | Details of Developer's Provision | See Development Contributions Table |
| S.7.4(3)(d) | Whether s7.11, s7.12 and s7.24 of the Act Apply to the Development | See clauses 8.1, 8.3 and 8.3 and Item 7.a, 7.c and 7.d of the VPA Particulars |
| S.7.4(3)(e) | Whether benefits under Deed are or are not to be taken into consideration in determining a Development Contribution under s7.11 | See clause 8.2 and Item 7.b of the VPA Particulars |

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|---------------------|---|--|
| S.7.4(3)(f) | Mechanism for the Resolution of Disputes | See Part 3 |
| S.7.4(3)(g) | Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer | See Part 4, Part 5, clause 23 and Items 15-19 of the VPA Particulars |
| S.7.4 (10) | Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land | Yes |
| S.7.5 | Public Notice & Public Inspection of Draft Agreement | Yes |
| S.7.6 | Registration | See Part 5 |
| S.6.15(1)(d) | If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued? | No. |

Table 2 – Provisions of Regulation

| Regulation Provision | Requirement | Compliance |
|--|--|--|
| S.203(1) | Form & Subject-Matter | Yes |
| S.203(7) | Secretary's Practice Note | Yes |
| S.204 | Public Notice & Public Inspection of Draft Agreement | Yes |
| S.205 | Explanatory Note | See Appendix |
| Ss.21, 34, 48 Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 | If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate, subdivision works certificate or occupation certificate for the work is issued? | Yes, see Column 3 of <i>Part B – Dedication Land</i> of the Development Contributions Table in Schedule 2. |



Parties

Council **Shoalhaven City Council** ABN 59 855 182 344 of 36 Bridge Road,
Nowra NSW 2541

Developer **AMAL Trustees Pty Ltd ATF Sussex Inlet Property Trust**
ACN 609 737 064 of Level 13, 20 Bond St Sydney, NSW 2000

Background

- A The Developer is the owner of the Land.
- B The Developer proposes to carry out the Development on the Land.
- C The Council has granted the Applicable Development Consent in respect of the Development on the Land.
- D The Developer has offered to enter into a planning agreement with the Council in connection with the carrying out of the Development under section 7.4 of the Act under which the Developer will dedicate the Drainage Reserve to the Council.
- E The Council has accepted the Developer's offer.
- F The Parties have agreed to enter into this Deed to give effect to the Developer's offer.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

Definitions

- 1.1 In this Deed, the words and phrases appearing in Column 1 of the following table have the meaning set out in Column 2 of that table corresponding to those words or phrases except in so far as the context or subject-matter otherwise indicates or requires:

Table

| Column 1 | Column 2 |
|---|---|
| Word or phrase | Meaning |
| Act | means the <i>Environmental Planning and Assessment Act 1979</i> (NSW). |
| Applicable Contributions Plan | means the contributions plan (within the meaning of the Act) specified in Item 6.a of the VPA Particulars as amended or substituted from time to time. |
| Applicable DSP | means the DSP specified in Item 6.b of the VPA Particulars as amended or substituted from time to time. |
| Applicable Development Consent | means the development consent specified or described in Item 5 of the VPA Particulars or granted in respect of the Development. |
| Approval | includes approval, consent, licence, permission or the like. |
| Approved Person | means a person reasonably approved by the Council to undertake design, construction, supervision, inspection, testing or certification of the Developer Works because of the suitability of their qualifications, skills and experience in the Council's reasonable opinion. |
| Authority | means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the <i>Local Government Act 1993</i> (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like. |
| Background Intellectual Property | means Intellectual Property that: (a) relates to the Developer Works, (b) exists at the date of this Deed or is later created but not as a result of performing this Deed, (c) does not belong to a third party. |
| Bank Guarantee | means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by: (a) one of the following trading banks: (i) Australia and New Zealand Banking Group Limited, (ii) Commonwealth Bank of Australia, (iii) Macquarie Bank Limited, (iv) National Australia Bank Limited, (v) St George Bank Limited, |

- (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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| Charge | means the charge referred to in clause 19. |
| Charge Land | means the land specified or described in Item 15 of the VPA Particulars. |
| Claim | includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action. |
| Clearance Certificate | means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the <i>Taxation Administration Act 1953</i> (Cth). |
| CLM Act | means the <i>Contaminated Land Management Act 1997</i> (NSW). |
| Construction Certificate | has the same meaning as in the Act. |
| Construction Contract | means a contract or arrangement entered into between the Developer as principal and another person under which the other person undertakes to provide Work required by this Deed, or to supply related goods and services, for the Developer. |
| Contamination | has the same meaning as in the CLM Act. |
| Contractor | means the contractor under the Construction Contract. |
| Contributions Plan Project | means a project specified in the Applicable Contributions Plan in respect of which conditions under section 7.11 or section 7.12 of the Act may be imposed. |
| Contribution Value | in relation to an Item specified in the Development Contributions Table means the \$ amount specified in Column 4 of that Table corresponding to the Item. |
| Cost | means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature. |
| Council Developer Works Contribution Amount | means the \$ amount or amounts specified in Item 9 of the VPA Particulars in relation to all or specified Developer Works. |
| Council Land Dedication Contribution Amount | means the \$ amount specified in Item 8 of the VPA Particulars in relation to all or specified Dedication Land. |
| CPI | means the ' <i>Consumer Price Index – Sydney All Groups</i> ' published by the Australian Bureau of Statistics. |

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| Dedication Land | means the land the Developer is required to dedicate to the Council free of cost, being land specified in <i>Part B – Dedication Land</i> of the Development Contributions Table or land otherwise required to be dedicated under this Deed. |
| Deed | means this Deed and includes any schedules, annexures and appendices to this Deed. |
| Defect | means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work. |
| Defects Liability Period | means, in relation to the whole or any specified part of the Developer Works, the period specified in Item 13 of the VPA Particulars commencing on the day immediately after a Practical Completion Certificate is issued by the Council. |
| Defects Liability Security | means the \$ amount of Security specified in Item 17 of the VPA Particulars indexed in accordance with the Indexation Method. |
| Developer Works | means the Works specified in <i>Part C – Developer Works</i> of the Development Contributions Table and any other Works the Developer is required to provide to the Council under this Deed. |
| Developer Works Plans & Drawings | means the detailed plans and drawings for the Developer Works approved by the Council referred to in Schedule 4. |
| Developer Works Provisions | means the provisions contained in Schedule 5. |
| Development | means the development specified or described in Item 2 of the VPA Particulars. |
| Development Application | means the development application within the meaning of the Act specified or described in Item 4.a of the VPA Particulars. |
| Development Contribution | means the dedication of land free of cost, a monetary contribution, the provision of any other material public benefit including but not limited to the provision of Works, or any combination of them. |
| Development Contribution Credit Amount | means the \$ amount specified in Item 10 of the VPA Particulars |
| Development Contribution Surplus Credit Amount | means the \$ amount specified in Item 11 of the VPA Particulars. |
| Development Contributions Table | means the table contained in Schedule 2. |

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| Development Servicing Plan (DSP) | means a 'DSP document' within the meaning of the '2016 <i>Developer Charges Guidelines for Water Supply, Sewerage and Stormwater</i> ' issued by the Minister for Lands and Water pursuant to section 306(3)(c) of the <i>Water Management Act 2000</i> (NSW). |
| Dispute | means a dispute or difference between the Parties under or in relation to this Deed. |
| ELNO | has the meaning given to that term in the Participation Rules. |
| Equipment | means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed. |
| Final Completion Certificate | means a certificate in writing issued by the Council to the Developer to effect that, in the reasonable opinion of the Council, the Developer Works to which the certificate relates have been completed by the Developer in accordance with this Deed. |
| Final Lot | means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land: <ul style="list-style-type: none">(a) that is to be dedicated or otherwise transferred to the Council, or(b) on which is situated a dwelling-house that was in existence on the date of this Deed. |
| Force Majeure Event | means an earthquake, cyclone, fire, riot or serious civil commotion, sabotage, act of a public enemy, act of God (excluding storms), war, revolution, radioactive contamination or flood, the effects of which cannot be prevented by taking those steps a prudent and competent person would take. |
| Foreign Resident Capital Gains Withholding Amount | mean the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the <i>Taxation Administration Act 1953 (Cth)</i> . |
| General Security | means a Bank Guarantee or a bond or other form of security on terms reasonably satisfactory to the Council in the amount specified in Item 16.a of the VPA Particulars indexed in accordance with the method of indexation specified in 16.b of the VPA Particulars. |
| GST | has the same meaning as in the GST Law. |
| GST Law | has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> and any other Act or regulation relating to the imposition or administration of the GST. |
| Instrument Change | means the change to the environmental planning instrument specified or described in Item 3 of the VPA Particulars. |

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| Insurances | means the insurances specified in Item 20 of the VPA Particulars and such other insurances required by law in relation to the Developer Works. |
| Intellectual Property | means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world. |
| Item | means a numbered item appearing in the VPA Particulars or the Development Contributions Table. |
| Just Terms Act | means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW). |
| Land | means the land specified or described in Item 1 of the VPA Particulars. |
| Maintain | in relation to Developer Works, means keep in a good state of repair and working order, and includes repair of any damage to the Works. |
| Maintenance Period | in relation to Developer Works means the period specified in Item 14 of the VPA Particulars. |
| Maintenance Security | means the \$ amount of Security specified in Item 18 of the VPA Particulars indexed in accordance with the Indexation Method. |
| Modification Application | means the application to modify the Applicable Development Consent specified or described in Item 4.b of the VPA Particulars. |
| N/A | means Not Applicable |
| Occupation Certificate | has the same meaning as in the Act. |
| Other Land | means land owned or occupied by a person other than the Developer or the Council to which entry and access is needed by the Developer to perform this Deed. |
| Participation Rules | means the participation rules as determined by the <i>Electronic Conveyancing National Law</i> as set out in the <i>Electronic Conveyancing (Adoption of National Law) Act 2012</i> (NSW). |
| Party | means a party to this Deed. |
| PEXA | means Property Exchange Australia Ltd. |
| Practical Completion | in relation to the Developer Works or a specified part of the Developer Works occurs when the Council has issued a Practical Completion Certificate for the Developer Works or the part. |

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| Practical Completion Certificate | means a certificate issued by the Council to the Developer to the effect that, in the reasonable opinion of the Council, the Developer Works or a specified part of the Developer Works are substantially complete and any incomplete part or Defect is of a minor nature. |
| Practical Completion Date | means: (a) the date specified in Item 12 of the VPA Particulars in relation to all of the Developer Works, or (b) the dates specified in Item 12 of the VPA Particulars in relation to the Developer Works in a particular Stage or particular Developer Works. |
| Principal Contractor | means the Person defined in as the Principal Contractor under the <i>Work Health and Safety Act 2011</i> (NSW) or <i>Work Health and Safety Regulation 2011</i> (NSW) or an equivalent under Commonwealth work health and safety laws. |
| Rectification Notice | means a notice in writing: (a) identifying the nature and extent of a Defect or incomplete Work, and (b) specifying the works or actions that are required to Rectify the Defect or incomplete Work, and (c) specifying the date by which or the period within which the Defect or incomplete Work is to be rectified, which date or period must not be unreasonable having regard to the nature of the Defect or incomplete Work. |
| Rectify | means rectify, remedy or correct. |
| Regulation | means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW). |
| Review Period | means the period specified in Item 23 of the VPA Particulars. |
| Section 7.11 Contribution | means a monetary contribution payable to the Council under s7.11 of the Act pursuant to the Applicable Development Consent. |
| Site Audit Report | has the same meaning as in the CLM Act. |
| Site Plan | means the plan contained in Schedule 3. |
| Stage | means a stage of the Development approved by the Applicable Development Consent or otherwise approved in writing by the Council for the purposes of this Deed. |
| Subdivision Certificate | has the same meaning as in the Act. |
| Subdivision Works Certificate | has the same meaning as in the Act. |

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| Technical Data | means all technical know-how and information in material form, including manuals, designs, standards, specifications, reports, models, plans, drawings, calculations, software, source code and test results. |
| Third Party Intellectual Property | means Intellectual Property relating to the Developer Works that is owned by a person other than the Council or the Developer. |
| Transfer of Ownership Notice | means a notice issued by the Council to the Developer stating that Developer Works the subject of a Practical Completion vest in the Council on a specified date being not sooner than 14 days after the notice is issued. |
| VPA Particulars | means the information contained in Schedule 1. |
| WHS | means work health and safety. |
| WHS Law | means the <i>Work Health and Safety Act 2011 (NSW)</i> and <i>Work Health and Safety Regulation 2011 (NSW)</i> . |
| Work | means the physical result of carrying out work in, on, over or under land. |
| Works-As-Executed Plan | means detailed plans and specifications of Developer Works carried out by the Developer. |

Interpretation

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday or a public holiday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.
- 4.2 The Developer acknowledges and agrees that the Applicable Development Consent may be granted subject to a condition requiring this VPA to be complied with in connection with the carrying out of the Development and the

Developer is not to object to, or seek a review of, of or appeal against the imposition of such a condition.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

Section 7.11 of the Act

- 8.1 Item 7.a of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.11 of the Act to the Development.
- 8.2 If Item 7.a of the VPA Particulars states that this Deed does not wholly exclude the application of section 7.11 of the Act to the Development, Item 7.b of the VPA Particulars states whether the benefits provided by the Developer under this Deed are or are not to be taken into consideration when determining a Development Contribution under section 7.11 relating to the Development.

Section 7.12 of the Act

- 8.3 Item 7.c of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.12 of the Act to the Development.

Section 7.24 of the Act

- 8.4 Item 7.d of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of s7.24 to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with the Development Contributions Table and any other provision of this Deed requiring the Developer to make Development Contributions.

Effect of modification of Applicable Development Consent

- 9.2 If:
- 9.2.1 Part A of the Development Contributions Table specifies that monetary Development Contributions are payable in respect of the Development per dwelling or per Final Lot or for a specified number of dwellings or Final Lots, and
 - 9.2.2 after this Deed is entered into the Applicable Development Consent is modified under the Act to allow for additional dwellings or Final Lots (or both),
- the Developer is to pay monetary Development Contributions to the Council for the additional dwellings or Final Lots (or both) not later than 14 days after the Applicable Development Consent has been modified or such later time as may be agreed in writing between the Parties.

Contribution Values

- 9.3 The Parties acknowledge and agree that a Contribution Value:
- 9.3.1 constitutes the agreed value of the public benefit of a Development Contribution required to be made under this Deed irrespective of the cost to the Developer of making the Development Contribution, and
 - 9.3.2 does not serve to define the monetary extent of the Developer's obligation to make the Development Contribution to which the Contribution Value relates.

Application of Development Contributions

- 9.4 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

Flexibility in application of Development Contributions

- 9.5 Despite clause 9.4, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

11 Dedication of land

When dedication of land made

- 11.1 A Development Contribution comprising Dedication Land is dedicated for the purposes of this Deed when:
- 11.1.1 the Council is given:
- (a) a Clearance Certificate that is valid at the time of dedication of the Dedication Land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the Dedication Land, and
- 11.1.2 One of the following has occurred:
- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the Dedication Land as a public road (including a temporary public road) under the *Roads Act 1993 (NSW)* or as a public reserve or drainage reserve under the *Local Government Act 1993 (NSW)*, or
 - (b) the Council is given evidence that a transfer of the Dedication Land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.

Developer to facilitate dedication

- 11.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

Dedicated Land to be free of encumbrances

- 11.3 The Developer is to ensure that Dedication Land is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council (City Services Director or delegate).

Request by Developer

- 11.4 If, having used all reasonable endeavours, the Developer cannot ensure that Dedication Land is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

Site Audit Report & Site Audit Statement

- 11.5 Before dedicating the Dedication Land to the Council, the Developer, at its cost, is to obtain and provide to the Council a Site Audit Report and Site Audit Statement stating that the Dedication Land is suitable for the purpose for which the Dedication Land is required to be dedicated under this Deed without being subject to compliance with an environmental management plan.

Indemnity

- 11.6 The Developer indemnifies and agrees to keep indemnified the Council against all Claims made against the Council as a result of any Contamination on or emanating from the Dedication Land but only in relation to Contamination that existed on or before the date that the Dedication Land is transferred or dedicated to Council or compulsorily acquired by Council pursuant to this Deed.

Responsibility for Cost of Land Dedication

- 11.7 The Developer is responsible for meeting all Costs of and incidental to the dedication of the Dedication Land to the Council unless one of both of the following applies:
- 11.7.1 Item 8 of the VPA Particulars specifies a Council Land Dedication Contribution Amount towards the Cost of all or specified Dedication Land, or
- 11.7.2 this Deed otherwise expressly provides for a Dedication Land Cost to be met that is not required to be met by the Developer.

Contribution by Council towards Cost of Dedication Land

- 11.8 If Item 8 of the VPA Particulars specifies a Council Land Dedication Contribution Amount, the Council is to pay that amount to the Developer in accordance with any requirements specified in that Item or otherwise in accordance with a written agreement entered into between the Council and the Developer.

Caveat by Council

- 11.9 The Developer acknowledges that the Council has an equitable estate or interest in the Dedication Land entitling the Council, pursuant to section 74F of the *Real Property Act 1900* (NSW), to lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the Council's estate or interest in the Dedication Land.

12 Application of Developer Works Provisions

Application of Developer Works Provisions

- 12.1 The Developer Works Provisions apply to and in respect of Developer Works required by this Deed.

13 Cost of Developer Works

Responsibility for Cost of Developer Works

- 13.1 The Developer is responsible for meeting all Costs of and incidental to the Developer Works required to be provided under this Deed unless one of both of the following applies:
- 13.1.1 Item 9 of the VPA Particulars specifies a Council Developer Works Contribution Amount towards the Cost of all or specified Developer Works, or
- 13.1.2 this Deed otherwise expressly provides for a Developer Works Cost that is not required to be met by the Developer.

Contribution by Council towards Cost of Developer Works

- 13.2 If Item 9 of the VPA Particulars specifies a Council Developer Works Contribution Amount, the Council is to pay that amount to the Developer in relation to the Developer Works within 14 days after both of the following have occurred:
- 13.2.1 all of the Developer Works have vested in the Council, and
- 13.2.2 all land on which the Developer Works have been carried out that is not owned, occupied or otherwise controlled by the Council has been transferred to the Council.

14 Development Contribution Credit Amount

Application of clause

- 14.1 This clause 14 applies if a Development Contribution Credit Amount is specified in Item 10 of the VPA Particulars.

Application of amount

- 14.2 Pursuant to s7.11(5)(b) of the Act, in consideration of the Developer carrying out the Developer Works and otherwise performing all of its obligations under this Deed, the Section 7.11 Contribution payable by the Developer is to be reduced by the Development Contribution Credit.

15 Development Contribution Surplus Credit Amount

Application of amount

- 15.1 If a Development Contribution Surplus Credit is specified in Item 11 of the VPA Particulars:
- 15.1.1 the Council is to apply the Development Contribution Surplus Credit, towards the satisfaction of any monetary contributions the Developer is required to pay to the Council under s7.11 of the Act in relation to any development (other than the Development) for which

development consent is granted under the Act after this Deed commences, and

15.1.2 the Developer may assign the Development Contribution Surplus Credit or any part of it to any person if the Developer:

- (a) obtains the written consent of the Council, which may not be unreasonably withheld, and
- (b) enters into a deed with the Council and the transferee of the Monetary Contribution Surplus Credit on terms reasonably satisfactory to the Council.

Indexation of amount

15.2 The Developer Contribution Surplus Credit is to be indexed from the date of this Deed until the date it is applied in accordance with clause 15.1 in accordance with the indexation method contained in the Applicable Contributions Plan.

Part 3 – Dispute Resolution

16 Dispute Resolution – mediation

Application of clause

16.1 This clause 16 applies to any Dispute arising in connection with this Deed other than a dispute to which clause 17 applies.

When Dispute arises

16.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

Meeting between Parties

16.3 If a notice is given under clause 16.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Meditation of Dispute

16.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

Exercise of legal rights

16.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal

rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

Costs

- 16.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 16.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

17 Dispute resolution – expert determination

Application of clause

- 17.1 This clause 17 applies to a Dispute arising in connection with this Deed if:
- 17.1.1 the Parties agree that the Dispute can be appropriately determined by Expert Determination, or
- 17.1.2 the Chief Executive Officer (or equivalent) of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion at the joint request of the Parties that the Dispute can be determined by a member of that body.

When Dispute arises

- 17.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

Meeting between Parties

- 17.3 If a notice is given under clause 17.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Expert determination

- 17.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.

Expert determination binding

- 17.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

Costs of Parties

- 17.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

Costs of Expert

- 17.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

Part 4 - Enforcement

18 General Security

Application of this clause

- 18.1 This clause 18 applies if Item 16.a of the VPA Particulars specified an amount of General Security.

Composition of General Security

- 18.2 For the avoidance of doubt, the General Security includes the Defects Liability Security and the Maintenance Security.

Provision of General Security

- 18.3 The Developer is to provide the General Security to the Council:
- 18.3.1 before the Developer obtains a Construction Certificate for any part of the Development or before the Developer commences any part of the Developer Works, whichever occurs first, or
- 18.3.2 at such other time agreed in writing by the Council.

Apportionment of General Security

- 18.4 If agreed in writing by the Council, the General Security may be apportioned to different Stages or different Developer Works, in which case the Developer is to provide the portion of the General Security relating to a particular Stage or particular Developer Works to the Council before the Developer obtains a Construction Certificate for the particular Stage or the Developer commences the particular Developer Works.

Purpose of General Security

- 18.5 The Council is to hold the General Security as security for the Developer performing its obligations under this Deed relating to the Developer Works and other material public benefits (other than the payment of monetary Development Contributions and the dedication of Dedication Land).

Indexation of General Security

- 18.6 The Developer is to ensure that the amount of the General Security provided to the Council at any time is indexed in accordance with Item 16.b of the Particulars.

Call-up of General Security

- 18.7 Subject to clause 21.2, if the Developer breaches any its obligations under this Deed relating to the purpose for which the General Security is required to be provided, the Council may, without further notice to the Developer and notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, call-up the General Security, the Defects Liability Security or the Maintenance Security, as appropriate, and apply it to remedy the Developer's breach and the Council's costs specified in clause 21.5 of so doing.

Release & return of General Security

- 18.8 Subject to clause 18.10, the Council is to release and return the General Security or any unused part of it to the Developer within 14 days of issuing a Practical Completion Certificate for the Developer Works unless the Parties have entered into a written agreement providing for the progressive release of the General Security at times or upon the occurrence of events specified in the agreement.
- 18.9 Despite clause 18.8 but subject to clause 18.10, if the Developer has provided the Council with a portion of the General Security relating to a particular Stage or particular Developer Works, the Council is to release and return the portion or any unused part of it to the Developer within 14 days of issuing a Practical Completion Certificate for all of the Developer Works in the particular Stage or the particular Developer Works.
- 18.10 The amount of the General Security released and returned by the Council under clause 18.8 or 18.9 must not exceed the amount of the General Security minus the percentages of that amount allocated to the Defects Liability Security and the Maintenance Security.
- 18.11 The Council is to release and return the Defects Liability Security, or any remaining part, to the Developer within 28 days after the end of the Defects Liability Period if, at that time, the Developer is not in breach of an obligation under this Deed to which the Defects Liability Security relates.
- 18.12 The Council is to release and return the Maintenance Security, or any remaining part, to the Developer within 28 days after the end of the Maintenance Period if, at that time, the Developer is not in breach of an obligation under this Deed to which the Maintenance Security relates.

Replacement General Security

- 18.13 The Developer may provide the Council with a replacement General Security at any time.
- 18.14 On receipt of a replacement General Security, the Council is to release and return the replaced the General Security to the Developer.
- 18.15 If the Council calls-up the General Security or any portion of it, the Council may give the Developer a written notice requiring the Developer to provide a further or replacement General Security to ensure that the amount of General Security held by the Council equals the amount the Council is entitled to hold under this Deed.

Restriction on entering Council land

- 18.16 Despite any other provision of this Deed, the Council, in its absolute discretion, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the General Security to the Council in accordance with this Deed.

19 Charge on Land

Application of this clause

- 19.1 This clause 19 applies if Item 15 of the VPA Particulars specifies land for the purposes of the definition of 'Charge Land' in clause 1.1 of this Deed.

Grant of charge

- 19.2 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Charge Land, to secure:
- 19.2.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and
 - 19.2.2 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer relating to making monetary Development Contributions.

Exercise of rights under Charge

- 19.3 Subject to clause 21.2, the Council may exercise its rights under the Charge if the Developer does not make Development Contributions in accordance with this Deed.

Registration

- 19.4 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* (NSW) duly executed by the registered proprietor of the Charge Land that is effective to register the Charge on the title to the Charge Land.
- 19.5 If the Charge Land does not form the whole of a lot in a deposited plan at the time that the instrument referred to in clause 19.4 is required to be given:
- 19.5.1 the Developer is to give the Council an instrument that charges the whole of the lot containing the Charge Land, and
 - 19.5.2 a reference in this Deed to the Charge Land is taken to be a reference to the whole of that lot.
- 19.6 The Developer is to do all other things necessary, including executing all other documents, to enable lodgement and registration of the Charge to occur electronically through PEXA or another ELNO.

Caveat and discharge

- 19.7 The Developer acknowledges that the Council has an equitable estate or interest in the Charge Land entitling the Council, pursuant to section 74F of the *Real Property Act 1900* (NSW), to lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the Council's estate or interest in that land.
- 19.8 The Developer agrees that:
- 19.8.1 the Council may lodge a caveat on the title of the Charge Land,
 - 19.8.2 the Council is to release the caveat from any part of the Charge Land once that part is contained in a separate lot to the remainder of the Charge Land, and
 - 19.8.3 the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 19.9.
- 19.9 In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the lot.
- 19.10 For the purposes of clause 19.2, the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date of settlement of the sale of that lot.

Subdivision of charge land not precluded

- 19.11 Nothing in this Deed prevents the registration of a plan of subdivision in respect of the Charge Land nor the creation of a Final Lot from the Charge Land.

Priority

- 19.12 The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

20 Acquisition of Dedication Land

Compulsory acquisition of Dedication Land

- 20.1 Subject to clause 20.2 and 21.2, if the Developer does not dedicate the Dedication Land at the time at which it is required to be dedicated under this Deed, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 20.2 The Council is to only acquire land pursuant to clause 20.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.

Pre-acquisition agreement

- 20.3 Clause 20.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.

Re-imbusement of Council for third party compensation

- 20.4 If, as a result of the acquisition referred to in clause 20.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on the General Security.

Indemnity

- 20.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Dedication Land except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 20.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 20, including without limitation:
- 20.6.1 signing any documents or forms,
 - 20.6.2 giving land owner's consent for lodgement of any Development Application,
 - 20.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW), and
 - 20.6.4 paying the Council's costs arising under this clause 20.

21 Breach of obligations

Notice of breach

- 21.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 21.1.1 specifying the nature and extent of the breach,
 - 21.1.2 requiring the Developer to:
 - (a) Rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 21.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

Notice of breach pre-requisite to exercise of rights

- 21.2 The Council may not exercise its rights under clause 18.7, 19.3 or 20.1 unless it has first given the Developer a notice under clause 21.1 and the Developer has failed to comply with the Notice.

Step-in right relating to Developer Works

- 21.3 If the Developer fails to comply with a notice given under clause 21.1 relating to the provision of Developer Works, the Council may, notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

Recovery of costs by Council as debt due

- 21.4 Despite any other provision of this Deed, any costs incurred by the Council in remedying a breach of this Deed may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 21.5 For the purpose of clause 21.4, the Council's costs of remedying a breach the subject of a notice given under clause 21.1 include, but are not limited to:
- 21.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 21.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 21.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

Exercise of Council's rights at law or in equity

- 21.6 Nothing in this clause 21 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

22 Enforcement in a court of competent jurisdiction

- 22.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 22.2 For the avoidance of doubt, nothing in this Deed prevents:
- 22.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 22.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

23 Registration of this Deed

Application of clause

- 23.1 This clause 23 applies if Item 19 of the VPA Particulars states that this Deed is to be registered for the purposes of s7.6(1) of the Act.

Documents for registration

- 23.2 Upon the commencement of this Deed, the Developer is to deliver to the Council:
- 23.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land, and
- 23.2.2 the written irrevocable consent of the registered proprietor and each person referred to in s7.6(1) of the Act to that registration.
- 23.3 The Developer is to do such other things as are reasonably necessary to enable lodgement and registration of this Deed to occur electronically through PEXA or another ELNO.

Removing notation from title

- 23.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- 23.4.1 in so far as the part of the Land concerned is a Final Lot,
- 23.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

24 Restriction on dealings

Restriction

- 24.1 The Developer is not to:
- 24.1.1 sell or transfer the Land, other than a Final Lot, or
- 24.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 24.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

- 24.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 24.1.5 the Developer is not in breach of this Deed, and
- 24.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Continued performance of obligations by Developer

- 24.2 Subject to clause 24.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 24.1.

Exclusion from restriction

- 24.3 Clause 24.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

25 Risk

- 25.1 The Developer performs this Deed at its own risk and its own cost.

26 Release

- 26.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

27 Indemnity

- 27.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.



28 Insurance

Requirement for Developer insurances

- 28.1 The Developer is to take out and keep current to the satisfaction of the Council the Insurances in relation to the Developer Works until the Developer Works are completed in accordance with this Deed.

Failure to comply with requirement

- 28.2 If the Developer fails to comply with clause 28.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 28.2.1 by calling upon the General Security provided by the Developer to the Council under this Deed, or
- 28.2.2 recovery as a debt due in a court of competent jurisdiction.
- 28.3 The Developer is not to commence to provide any Developer Works unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 28.1.

Part 7 – Limitation of Liability

29 Trustee's Limitation of Liability

- 29.1 The parties acknowledge that AMAL Trustees Pty Ltd ("**Trustee**") is entering into this Planning Agreement only in its capacity as trustee of the Sussex Inlet Property Trust ("**Trust**") and in no other capacity.
- 29.2 The Trustee is not liable to any other party to this Planning Agreement or any other person in any capacity other than in its capacity as trustee of the Trust.
- 29.3 A liability to any person arising under or in connection with this Deed is limited to and can be enforced by that person against the Trustee only to the extent to which it can be satisfied out of any property held by the Trustee out of which the Trustee is actually indemnified for the liability . This limitation of the Trustee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- 29.4 Each other party to this Deed and any other person waives their rights and releases the Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this Deed, which cannot be paid or satisfied out of any property of the Trust.
- 29.5 The provisions of this clause 29 will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, negligence or wilful default.

- 29.6 Each other party to this Deed acknowledges that it is responsible under this Deed for performing a variety of obligations under this deed. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed) will be considered fraud, negligence or wilful default of the Trustee for the purposes of clause 29 to the extent to which the act or omission was directed by or caused or contributed to or by any failure by any party to this Deed or any other person to fulfil its obligations relating to this Deed or by any act or omission of any party to this Deed or any other person (other than the Trustee).
- 29.7 No attorney, agent or delegate appointed in accordance with this Deed has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Trustee for the purposes of this clause 29.

PART 8 – Other Provisions

30 Annual report by Developer

Requirement for Developer to provide report

- 30.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed commences a report (**'Annual Performance Report'**) detailing the performance of its obligations under this Deed in the previous 12 month period (**'Reporting Period'**).

Form and content of report

- 30.2 The Annual Performance Report is to be in such a form and to address such matters as is reasonably required by the Council from time to time but must at a minimum detail the following:
- 30.2.1 all Approved Persons during the Reporting Period and any changes to Approved Persons during that period,
 - 30.2.2 all Development Contributions made by the Developer pursuant to this Deed during the Reporting Period and the dates on which the contributions were made,
 - 30.2.3 all Development Contributions due to be made by the Developer pursuant to this Deed in the next 12 month period,
 - 30.2.4 all Developers Works that had been commenced prior to the Reporting Period or were commenced during the Reporting Period but were not completed in that period,
 - 30.2.5 all Developers Works due to be commenced or completed within the next 12 month period,
 - 30.2.6 all Securities provided by the Developer to the Council under this Deed and held by the Council during the Reporting Period and the current value of each such Security.

Strict requirement

- 30.3 The Developer acknowledges and agrees that the provision of the Annual Performance Report each year in accordance with this clause 30 is a strict requirement of this Deed.

31 Review of Deed

Obligation to review Deed

- 31.1 The Parties agree to review this Deed by the end of each Review Period, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

Review triggers

- 31.2 For the purposes of clause 31.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

Duty of Parties

- 31.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 31.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

Where change of law occurs

- 31.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

No Dispute

- 31.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 31.1 (but not 31.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

32 Notices

- 32.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 32.1.1 delivered or posted to that Party at its address set out in Item 21 or 22 of the VPA Particulars, or
 - 32.1.2 emailed to that Party at its email address set out in Item 21 or 22 of the VPA Particulars.

- 32.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 32.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 32.3.1 delivered, when it is left at the relevant address,
 - 32.3.2 sent by post, 2 business days after it is posted, or
 - 32.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 32.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

33 Approvals and Consent

- 33.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 33.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

34 Costs of this Deed

Costs of Deed

- 34.1 The Developer is to pay to the Council the Council's costs not exceeding the amount specified in Item 24 of the VPA Particulars in relation to preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council, including the provision of a tax invoice, for such payment.

Enforcement costs

- 34.2 The Council may serve a notice in writing on the Developer ('**Enforcement Cost Notice**') requiring the Developer to pay all or any reasonable costs and expenses incurred by the Council in connection with:
- 34.2.1 investigating a non-compliance by the Developer with this Deed, and
 - 34.2.2 enforcing compliance by the Developer with this Deed.
- 34.3 For the avoidance of doubt, the costs and expenses referred to in clause 34.2 may include the costs or expenses incurred by the Council relating to the preparation or serving of the Enforcement Cost Notice.

- 34.4 An Enforcement Cost Notice is to specify the amount required to be paid to the Council by the Developer, include a tax invoice for the amount to be paid by the Developer and the date by which the amount is to be paid.
- 34.5 The Council may recover any unpaid costs and expenses specified in an Enforcement Cost Notice as a debt in a court of competent jurisdiction.

No dispute

- 34.6 Part 3 of this Deed does not apply anything done by the Council and any requirement imposed on the Developer by the Council in accordance with this clause 34.

35 Entire Deed

- 35.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 35.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

36 Further Acts

- 36.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

37 Governing Law and Jurisdiction

- 37.1 This Deed is governed by the law of New South Wales.
- 37.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 37.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

38 Joint and Individual Liability and Benefits

- 38.1 Except as otherwise set out in this Deed:
- 38.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 38.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

39 No Fetter

- 39.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

40 Illegality

- 40.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

41 Severability

- 41.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 41.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

42 Amendment

- 42.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203 of the Regulation.

43 Waiver

- 43.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 43.2 A waiver by a Party is only effective if it:
- 43.2.1 is in writing,
 - 43.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 43.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 43.2.4 is signed and dated by the Party giving the waiver.
- 43.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.

- 43.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 43.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

44 GST

- 44.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 44.2 Subject to clause 44.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 44.3 Clause 44.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 44.4 No additional amount shall be payable by the Council under clause 44.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 44.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 44.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 44.5.2 that any amounts payable by the Parties in accordance with clause 44.2 (as limited by clause 44.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

- 44.6 No payment of any amount pursuant to this clause 44, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 44.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 44.8 This clause continues to apply after expiration or termination of this Deed.

45 Explanatory Note

- 45.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 45.2 Pursuant to section 205 of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1: VPA Particulars

(Clause 1.1)

| Item | Details |
|---|--|
| 1. Land | Lot 22 DP 1270620 |
| 2. Development | The development the subject of the Applicable Development Consent. |
| 3. Instrument Change | N/A |
| 4. Application: a. Development Application b. Modification Application | Development Application SF10916 made by the Developer to the Council. Any Modification Application relating to the Development |
| 5. Applicable Development Consent | The Deferred Commencement Development Consent granted to the Development Application on 20 December 2023, as modified from time to time. |
| 6. Applicable Plan: a. Applicable Contributions Plan b. Applicable DSP | N/A N/A |
| 7. Application of the following provisions of the Act to the Development: a. Section 7.11 b. Consideration of benefits c. Section 7.12 d. Section 7.24 | Not excluded Benefits are not to be considered. Not excluded Not excluded |
| 8. Council Land Dedication Contribution Amount | N/A |

| | |
|---|--|
| 9. Council Developer Works Contribution Amount | N/A |
| 10. Development Contribution Credit Amount | N/A |
| 11. Development Contribution Surplus Credit Amount | N/A |
| 12. Practical Completion Date | N/A |
| 13. Defects Liability Period | N/A |
| 14. Maintenance Period | N/A |
| 15. Charge Land | N/A |
| 16. General Security: | |
| a. General Security | N/A |
| b. Indexation of General Security | N/A |
| 17. Defects Liability Security | N/A |
| 18. Maintenance Security | N/A |
| 19. Registration of this Deed | Yes |
| 20. Insurances | |
| a. Contract Works Insurance | N/A |
| b. Public Liability | N/A |
| c. Professional Indemnity Insurance | N/A |
| d. Workers Compensation Insurance | As required by law. |
| e. Other insurance | As required by law. |
| 21. Council Contact for Notices | Postal Address: P.O. Box 42 Nowra NSW 2541 Email: council@shoalhaven.nsw.gov.au Telephone: (02) 4429 3111 Representative: Chief Executive Officer |
| | Postal Address: PO Box 252, Oyster Bay NSW 2227 |

| | |
|--|---|
| 22. Developer Contact for Notices | Email: amcveigh@remara.com.au Representative: Andrew McVeigh |
| 23. Review Period | Each period of 1 year commencing on the commencement of this Deed. |
| 24. Costs of Deed | N/A |

Draft

Schedule 2: Development Contributions Table

| COLUMN 1 Item No / Details | COLUMN 2 Public Purpose | COLUMN 3 Timing | COLUMN 4 Contribution Value \$ |
|---|----------------------------|--|-----------------------------------|
| A. Monetary Contributions | | | |
| 1. N/A | N/A | N/A | N/A |
| B. Dedication Land | | | |
| The dedication, free of cost to the Council, of land for the purpose of a drainage reserve, being the part of the Land shown hatched on the Site Plan as ' <i>Proposed Lot 43 Drainage Reserve</i> '. | Drainage Reserve | Within 7 days of the issuing of a Subdivision Certificate in respect of the Land that authorises the creation of the Dedication Land as a separate Torrens title lot and prior to issuing an Occupation Certificate for any part of the Development. | Nil |
| C. Developer Works | | | |
| N/A | N/A | N/A | N/A |
| D. Other material public benefits | | | |
| N/A | N/A | N/A | N/A |



Schedule 3: Site Plan

Draft

LEGEND

VOLUNTARY PLANNING AGREEMENT (VPA)

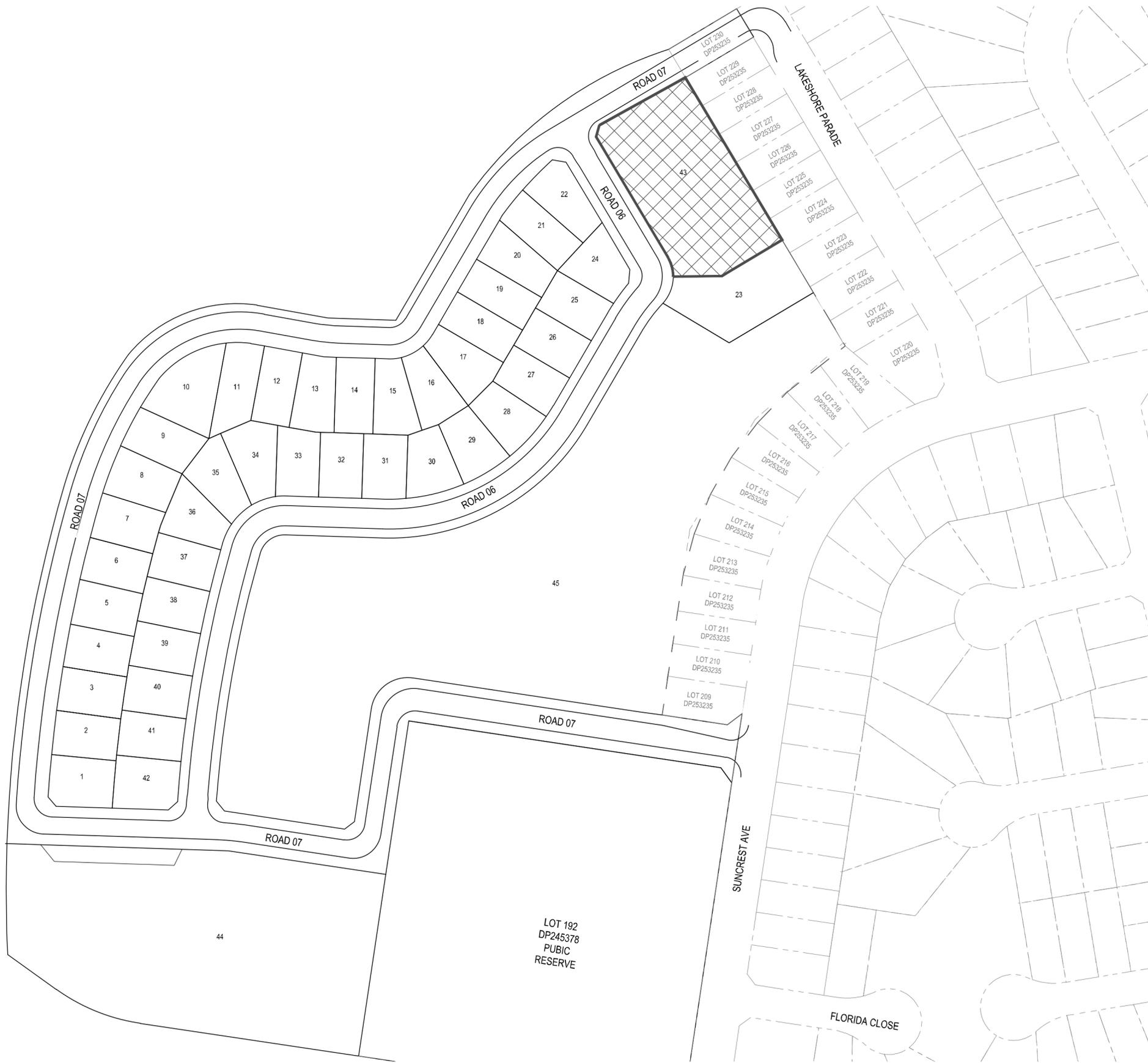


PROPOSED

LOT BOUNDARY

EXISTING

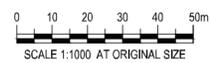
LOT BOUNDARY



EXISTING LOT
21 DP1270620

LOT 192
DP245378
PUBIC
RESERVE

| REV | DATE | DESCRIPTION | AMD BY | APP BY |
|-----|----------|----------------------|--------|--------|
| P2 | 06.02.24 | FOR INFORMATION ONLY | FMS | JMA |
| P1 | 09.01.24 | FOR INFORMATION ONLY | FMS | JMA |



remara.



| | |
|----------------------|---------------|
| DRAWN: J.RUSHTON | DESIGNED: |
| DRAFT CHECK: | DESIGN CHECK: |
| APPROVED: | |
| FOR INFORMATION ONLY | |

SUNCREST AVENUE SUSSEX INLET
SUBDIVISION WORKS CERTIFICATE
LAND DEDICATION PLAN

| | | | |
|-------------------------------------|-----------|------------------|----------------|
| DRAWING NUMBER MKRV0059-00-SK007 | SHEET No. | ORIG. SIZE A1 | REVISION P2 |
|-------------------------------------|-----------|------------------|----------------|

Alpha Group, 2/01/2024, 3:57 PM



Schedule 4: Developer Works Plans and Drawings

This Schedule is N/A

Draft



Schedule 5: Developer Works Provisions

This Schedule is N/A

Draft



Execution

Executed as a Deed

Dated:

Executed by the Council:

Director – City Futures (as the duly
authorised delegate of the Council)

Witness

Name

Name

Executed by the Developer in accordance with s127(1) of the Corporations Act (Cth)
2001

Director

Director / Secretary

Name

Name

Appendix: Explanatory Note

(Clause 45)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Council

Shoalhaven City Council ABN 59 855 182 344 of 36
Bridge Road, Nowra NSW 2541

Developer

**AMAL Trustees Pty Ltd ATF Sussex Inlet
Property Trust** ACN 609 737 064 of Level 13, 20 Bond St
Sydney, NSW 2000

Description of the Land to which the Draft Planning Agreement Applies

Lot 22 DP 1270620

Description of Proposed Development/Instrument Change

The Development, as described in the Applicable Development Consent, involves 'Torrens Title Subdivision (45 lots), Construction of Roads, Civil Works, Vegetation Clearing, and Associated Site Works.'

Description of Development Contributions

The dedication to the Council free of cost to the Council of land for the purpose of a drainage reserve.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

To ensure that land is dedicated to the Council to manage stormwater and maintain water quality from the proposed residential subdivision in perpetuity.

Nature of Draft Planning Agreement

The Planning Agreement is an agreement between the Council and the Developer under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) that is entered into in connection with the carrying out of the Development.

Effect of the Draft Planning Agreement

The Planning Agreement requires the Developer to dedicate to the Council free of cost to the Council land for the purpose of drainage reserve.

The Planning Agreement contains an agreement by the Developer enabling the Council to compulsorily acquire the Dedication Land for nominal consideration in the event that the Developer does not comply with its obligation to dedicate the Dedication Land to the Council.

The Planning Agreement is required to be registered on the title to the Land.

The Planning Agreement imposes restrictions on the Developer's ability to assign its rights or obligations under the agreement or to novate the agreement or to sell the Land unless and until it has performed its obligations under the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Planning purposes served by the Planning Agreement are to ensure that public infrastructure to address the likely impacts of the Development is provided in connection with the Development.

How the Draft Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by securing the provision of public infrastructure to address the likely impacts of the Development, and securing public benefits in connection with the Development.

Assessment of the positive or negative impact of the Draft Planning Agreement on the public or relevant section of the public

The Planning Agreement has no negative impact on the public or any section of the public as far as the Council is aware.

Whether the Draft Planning Agreement Conforms with the Planning Authority's Capital Works Program

The Planning Agreement is not inconsistent with the Council's Capital Works Program.

Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

Yes. The Planning Agreement requires the Developer to dedicate the Dedication Land to the Council within 7 days of the issuing of a Subdivision Certificate in respect of the Land that authorises the creation of the Dedication Land as a separate Torrens title lot and prior to issuing an Occupation Certificate for any part of the Development.

Draft